

**Notice of Allowability**

Application No.

10/708,720

Examiner

Sing P. Chan

Applicant(s)

KIRBY, MARK E.

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to January 11, 2006.
2. ☒ The allowed claim(s) is/are 1 and 5-8.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 20060302
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

## DETAILED ACTION

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Ronald E, Smith on March 1, 2006 and March 6, 2006.

The application has been amended as follows: In claim 1, line 3, ",", single solid" has been added between "elongate" and ",", in line 3, "body" has been added between "configuration" and ";", in line 4, "mounting on" has been deleted, "having" has been added between "said device" and "a spirit level", in line 7 to line 8, "; said openings collectively extending an entire extent of said device" has been deleted, in line 26, "whereby" has been replaced by "installing", and in line 26, "such that the subsequent rows" has been added between "foundation" and "are also level."

### **Drawings**

2. The drawings as filed on March 19, 2004 are accepted by the examiner.

### **Allowable Subject Matter**

3. Claims 1 and 5-8 are allowed.

The following is an examiner's statement of reasons for allowance: The claims recite a method for installing tiles on a vertical support surface. The method includes providing a device having an elongate, single solid, straight configuration body having a spirit level with a bubble, the device also includes a plurality of longitudinally spaced apart openings, axially misaligning the openings with respect to one another to maintain structural integrity of the device so that the device may be affixed to a stud behind the vertical support surface without limitation relating to the location of the stud, making a mark on the vertical support surface at a predetermined location, positioning the device with a tile support surface in abutting, overlaying relation to the vertical support surface in registration with the mark, rotating the device against the vertical support surface until the spirit level indicates that the tile support surface is horizontal, fastening the device to the vertical support surface by inserting a fastener through at least two of the openings, installing a lowermost row of tiles on the vertical support surface such that the lowermost row of tiles is supported by the tile support surface, removing the fastener after installation is complete, removing the device from overlying relation to the vertical support surface, and applying subsequent rows of tiles using the lowermost row of tiles as a foundation such that the subsequent rows are also level. Smith (U.S. 5,263,260) discloses a method of installing ceramic chair rail or tiles. The method includes providing an elongated support member with a tile support surface, selecting a height, i.e. marking on a surface, on a wall, positioning the support member on the selected height, which is in abutting and overlaying position over the wall or vertical surface, leveling the support member, i.e. rotating the support member, using spirit level,

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inserting push pins into each of the pin holes to maintain the support surface or edge at an attitude perpendicular to the wall, laying the ceramic chair rail or tiles along the edge of the support member, and after the tiles are set, removing the support member. (Col 6, line 66 to Col 7, line 14) Smith is silent as to the support members are a single solid body with a plurality of longitudinally spaced apart opening and axially misaligned with respect to one another to maintain structural integrity. Hannay (U.S. 1,836,846) discloses a method of forming plaster trim. The method includes providing a removable plaster trim form with two long side plates formed of sheet metal with nail holes to receive nail (Page 1, lines 68-83) and nail slots are provided on the overlapping plates to permit extension of the two plates from each other. (Page 2, 18-29) Hannay is silent as to providing a tile support surface, a single solid body, and a sprit level. A search of the prior art of record did not disclose reference or references in combination with the recited features.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sing P. Chan whose telephone number is 571-272-1225. The examiner can normally be reached on Monday-Thursday 7:30AM-11:00AM and 12:00PM-4:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher A. Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chan  
SPC

Sing Po

ca Fiorilla

CHRIS FIORILLA  
SUPERVISORY PATENT EXAMINER

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